

**REQUEST FOR PROPOSALS to the Office of Legislative Research  
and General Counsel for  
Legal Services Relating to House Investigative Committee  
RFP No. 2013-01**

**ADDENDUM 1**

**Addendum Date: July 17, 2013**

**ITEM 1**

**Question:** Will the COMMITTEE require a document management system as part of the LEGAL SERVICES?

**Answer:** This is not required by the RFP, but would probably help the successful requester fulfill his or her responsibilities more effectively. A responder may include this as an option in its RFP response.

**ITEM 2**

**Question:** Is the OLRGC seriously considering awarding the contract to an out-of state responder?

**Answer:** Yes. The OLRGC seeks to contract with the best person for the job. The OLRGC will seriously consider all responsive and responsible responses from in-state and out-of-state providers.

**ITEM 3**

**Question:** The RFP appears to anticipate a firm or group of attorneys. Is there a method by which a solo practitioner may be awarded the contract?

**Answer:** Yes. A solo practitioner could organize a group of attorneys and support staff (from more than one firm or practice) who submit an RFP response as a team.

#### ITEM 4

Question: How many attorneys does the OLRGC anticipate will be needed to provide the LEGAL SERVICES to the COMMITTEE?

Answer: This is difficult to predict. The number of attorneys that are needed may fluctuate depending on litigation or other matters that arise during the course of the investigation. Based on OLRGC's research, a similar investigation in another state began with six attorneys and, due to litigation, increased to twenty attorneys. Fewer attorneys may be required for this matter. The RFP asks for the cost per the lead attorney, principal attorneys, and other attorneys. The RFP does not require that the responder indicate the total number of attorneys.

#### ITEM 5

Question: Has the HOUSE budgeted a specific amount for Special Counsel or predicted the cost?

Answer: The HOUSE has not budgeted a specific amount. Utah's Office of Legislative Fiscal Analyst has made a rough estimate of the costs relating to the COMMITTEE. This estimate is available at:  
<http://le.utah.gov/lfa/fnotes/2013H1/HR9001.fn.pdf>

#### ITEM 6

Question: With regard to question 5.i. on page 10 – "A specific point-by-point response, in the order listed, to each requirement of the RFP, including all addenda to the RFP, indicating whether the responder meets, and agrees to comply with, the requirement." – please confirm that this refers to the RFP Requirements in IV.2. on page 6 of the RFP. If there are other specific requirements to address for this question, please specify them.

Answer: It refers to all of the RFP requirements. For example, a point by point response could read as follows:

"Responder understands, and agrees to comply with, the following provisions of the RFP:

1. Section I
2. Section II, including 1,2,3a,3b,3c,3d,3e,3f,3g,3h,3i, 3j, 3k, 3l, 4, 5, 6, 7, and 8
3. Section III, including 1, 2, 3, 4, 5a, 5b, 5c, 5d, and 6

...

[ \_\_.] Attachment A, Sections I, II, including a and b, III, and IV.

[ \_\_.] Attachment B, including Section 1, 1.1, 1.2, 1.2.1, 1.2.2, 1.3, 2, 2.1, ..."

Though this is a somewhat tedious process, it ensures that all measures have been reviewed, understood, and agreed to. The RFP also describes the process for a responder to make deviations or exceptions to a provision. The responder may include contractual provisions that the responder desires to add to the agreement (such as terms and conditions normally entered into between an attorney and the attorney's client) that do not conflict with the RFP requirements. If any additional terms or conditions proposed by a responder conflict with the RFP requirements, the responder must explain the responder's deviations and exceptions in accordance with the procedure described in the RFP.

#### ITEM 7

Question: In order for me to put together a more accurate bid and to appreciate the complexity of the situation, it would be helpful if you could give me more specific information about the accusations, where they originated (I'm looking for number of witnesses here, as I would bring my very talented investigator into the case), expected depth of the investigation, etc.

Answer: Most of the known allegations appeared in newspaper articles published by the Deseret News, The Salt Lake Tribune, City Weekly, and Utah Policy Daily. The information may be obtained on the Internet.

#### ITEM 8

Question: a. How long is this position anticipated to last?  
b. Can we work from Idaho?  
c. Would you like a monetary proposal?

Answer: a. See in the RFP, section III.5  
b. Some of the LEGAL SERVICES can be provided remotely, but the presence of one or more attorneys will be required for COMMITTEE meetings or court appearances and may be required under other circumstances.  
c. See the provisions of the RFP concerning cost, including, but not limited to, Attachment A to the RFP.

#### ITEM 9

Question: Over the weekend I read comments in the Deseret News, attributed to Brad Dee, that due to the Utah Bar's investigation of John Swallow, counsel from outside the state would be required to assist your office with the special investigative committee. A Tribune article quoted Dee to the same effect but with more tentative language. Could you provide some clarification?

Answer: The published comments that you refer to are inaccurate. Representative Dee has assured us that he was misquoted. We are not requiring that the special counsel be from outside the state. Nor are we requiring that the special counsel be from inside the state. We are accepting, and seriously considering, proposals from both in-state and out-of-state responders.

#### ITEM 10

Question: I didn't see a provision for estimating investigator costs. Given the necessity of interviewing witnesses, serving subpoenas, etc, who will provide investigative resources?

Answer: We plan on issuing a separate RFP for special investigator services as soon as the contract with special counsel is signed. We are waiting to issue that RFP, because we want the special counsel to have some input on who is retained for investigative services.

#### ITEM 11

Question: Who is responsible for managing the competition process and who are the individuals involved in making the decision?

Answer: The person responsible for managing the competition process is the RFP contact, Thomas Vaughn. The evaluation committee has not yet been appointed. Thomas Vaughn will not be on the evaluation committee and will not appoint the members of the evaluation committee, but will work with the evaluation committee to ensure a fair, competitive process.

#### ITEM 12

Question: Outside of the RFP, are there any documents or specific persons we could benefit from speaking with prior to responding?

Answer: Background information on the allegations is available from news sources on the Internet. See the answer to Item 7.

#### ITEM 13

Question: My understanding is that outside counsel is being obtained to avoid a potential/existing conflict of interest. Explain how, if at all, such a conflict will impact our relationship with the OLRGC and any other attorneys or investigators ordinarily utilized by the OLRGC.

Answer: The OLRGC does not have a conflict of interest in relation to this investigation. Outside counsel is being sought for two reasons: to contract with a responder who has experience and ability in relation to conducting investigations; and to allow attorneys and other staff at OLRGC to focus on their regular duties.

#### ITEM 14

Question: My understanding is that the firm will be working “under the direction of, and in consultation with, the Legislative General Counsel.” What kind of relationship is the LGC looking for in regards to the investigation?

Answer: The LEGISLATIVE GENERAL COUNSEL is looking for a collaborative relationship with the successful responder, based upon mutual respect and the evolution of mutual trust as the relationship proceeds. The responder will, however, perform duties as directed by the LEGISLATIVE GENERAL COUNSEL. The LEGISLATIVE GENERAL COUNSEL has expertise on legislative powers, the legislative process, staffing and interacting with committees, parliamentary procedure, and constitutional law. The LEGISLATIVE GENERAL COUNSEL also has some insight into legislative politics. As stated in the RFP, the successful responder will provide experience and expertise in investigations, the presentation of evidence, examining and cross-examining witnesses, and issuing and enforcing subpoenas.

The lead attorney (and other attorneys for responder, as necessary) will consult with LEGISLATIVE GENERAL COUNSEL on a regular basis regarding the LEGAL SERVICES needed by, and being provided to, the COMMITTEE. Though the responder will provide the bulk of the LEGAL SERVICES, responder will keep the LEGISLATIVE GENERAL COUNSEL informed of the particulars of the investigation. The LEGISLATIVE GENERAL COUNSEL has the final word on legal strategy and representation with respect to the COMMITTEE. Responder’s client is the COMMITTEE. However, because the LEGISLATIVE GENERAL COUNSEL, other specified attorneys employed by the OLRGC, and the responder are on the same “legal team” for the COMMITTEE, they are free to share with each other all attorney/client related information with respect to the COMMITTEE.

#### ITEM 15

Question: Would it be possible to have our lead attorney meet with one or more persons responsible in the decision making process? If amenable, I believe a short meeting would greatly assist in understanding and evaluating the requirements of the RFP, and our ability to meet those requirements.

Answer: All finalists selected will be interviewed by the LEGISLATIVE GENERAL COUNSEL before a decision is made on the contract award.

#### ITEM 16

Question: Is the RFP going to be a public document? I'm considering Section 3, the "Detailed Discussion" element, and wondering if the Special Committee has any concerns that the requested detailed narrative discussion of the responder's approach to the matter may serve as a roadmap that offers a strategic advantage to those from whom the Special Committee may seek information? Your thoughts on how to balance that concern, if any, with the understandable desire to know how responder's plan to approach the matter, would be appreciated.

Answer: Responses will be available for disclosure, upon request, after the contract is awarded, but certain parts of the responses may be redacted under our public records law, including parts that, if released, would interfere with the investigation. Responses will not be disclosed before a contract is awarded. Responders may wish to disclose more precise strategic details in their interviews (if they are selected as finalists) rather than disclosing the details of their "roadmap" in a document that may later become public.

#### ITEM 17

Question: Can the Office of Legislative Research and General Counsel clarify what kind of "certification" they are looking for in point 5.g (pg. 10 of the RFP). Can this be a "we certify..." statement or is there some other type of documentation/certificate the Office seeks to obtain?

Answer: A written statement, signed by the lead attorney, is sufficient.

#### ITEM 18

Question: Will there be any special rules in place governing disclosure of the work product of the Special Counsel? Public accountability is of critical importance -- the key objective of the investigation, of course -- but it seems to me that the interest in obtaining accurate information based on truthful sources suggests some need for balance in approaching public disclosure of work product.

Answer: In order to protect the integrity of the investigation, certain records relating to the investigation will be protected from disclosure (at least during the course of the investigation) under Utah's Government Records Access and Management Act.

ITEM 19

Question: Is there a cap on the hourly rate?

Answer: No. Cost will be taken into account as part of the RFP evaluation process.

ITEM 20

Question: Would the Committee be amendable to an alternative billing arrangement, such as setting a fixed fee for the services?

Answer: We are willing to consider alternate billing arrangements. However, each responder must provide the option of the billing arrangement described in Attachment A. Because it is difficult to predict the length of the representation and the workload that will be required, a fixed fee arrangement may be difficult.

ITEM 21:

Question: Will inquiries and responses regarding the RFP be publicly available?

Answer: Yes. However, until the contract is awarded, the source of the inquiries will not be released.

ITEM 22:

Question: Since we do not have appropriate Utah licensed counsel in our firm, and will have to engage local counsel to comply with Rule 5.5(c) (1), must the local Utah counsel be designated by the time the reply to RFP is submitted?

Answer: The attorney whom you will associate with in order to comply with Rule 5.5(c)(1) is the LEGISLATIVE GENERAL COUNSEL.

ITEM 23:

Question: Can you estimate how many documents will have to be reviewed and how many witnesses may have to be interviewed as part of the engagement?

Answer: Unfortunately, no. This is extremely difficult to predict.

ITEM 24:

Question: We understand you have previously advised the Legislature of the procedures necessary to recommend the adoption of one or more articles of impeachment. Will you look to Legal Counsel to advise, in greater detail, the means, manner and method the Committee and House must follow in undertaking its assignment? If so, do you expect counsel to evaluate, determine and advise the

rights of the Committee to investigate the facts as they relate to Mr. Swallow's alleged conduct before and since being elected? What ability will Legal Counsel have to conduct an investigation in advance of Committee meetings?

Answer: LEGISLATIVE GENERAL COUNSEL may ask that the special counsel provide the advice that you mention at some point in the future. We are not presently asking for that advice, but may seek such legal research and advice during the course of the representation. The special counsel shall, under the direction and control of the LEGISLATIVE GENERAL COUNSEL, and in consultation with the COMMITTEE, work with the investigators retained by the OLRGC to organize and conduct an investigation. As portions of the investigation are completed, the evidence and testimony gathered through the investigation will be presented to the COMMITTEE. Also, see the definition of LEGAL SERVICES in the RFP.

#### ITEM 25

Question: The RFP appears to call for the inclusion of our "investigative plan or outline" of "all options and alternatives proposed." (RFP at 9.) The scope and planning of the engagement is usually done in conjunction with the client and is ordinarily protected by the attorney-client privilege. The privilege arguably could be waived if the responder is called upon to set forth its investigative plan and options, which would benefit Mr. Swallow and his counsel. The Legislative General Counsel must weigh specificity against the risk of waiving privilege, especially if the responses to the RFP are made public before the investigation is commenced. Accordingly, how detailed is the response expected to be? Is the expectation for the responder simply to provide the framework of the investigation in general terms, that is, the general procedure we would undertake in these types of engagements and investigations without reference to the legal issues and advice sought?

Answer: We desire a description that provides enough information for the evaluation committee to determine whether the responder has sufficient expertise to conduct the investigation in an efficient and effective manner. We leave it to the responder to determine the level of detail necessary to accomplish this. Also, see the answer to Item 16.

#### ITEM 26

Question: The RFP also raises questions as to who is the client. The RFP states that the selected firm "will be expected to, under the direction of, and in consultation with, the Legislative General Counsel provide all work relating to the provision of Legal Services to the Committee." (RFP at 3.) Who will have authority to direct work to Legal Counsel under the engagement? Is the expectation to take direction from the Legislative General Counsel, the Committee collectively, or



the members of the Committee individually? In terms of interacting with the Committee will we have the ability and/or be expected to meet personally with Committee members? The legal issues or focus of our engagement may differ depending on from whom Legal Counsel takes direction. Is it anticipated that the Legislative General Counsel will serve as the primary interface between Legal Counsel, the Committee and/or its members?

Answer: The COMMITTEE is the client. The LEGISLATIVE GENERAL COUNSEL will be actively involved in the provision of the LEGAL SERVICES to the committee and will work with the special counsel, with the LEGISLATIVE GENERAL COUNSEL acting as the head of the "legal team." The LEGISLATIVE GENERAL COUNSEL will establish a protocol for communication between the LEGISLATIVE GENERAL COUNSEL, the responder, the COMMITTEE, and members of the COMMITTEE. Also, see the answer to Item 14.

#### ITEM 27

Question: Although we understand the scope of the subpoena power and the authority to grant immunity to witnesses, does the Legislative General Counsel intend to have Legal Counsel undertake this task in advance of Committee meetings? Who, if anyone, is expected to interact and cooperate with the other governmental agencies currently conducting ongoing criminal investigations? (*As you know, there are several investigations currently being undertaken. We assume you will want advice on what impact these investigations will have on the committee, if any. Will the Committee expect counsel to interact with these various agencies?*) A broad grant of immunity may impact state and federal law claims currently being investigated against Mr. Swallow. The exercise of this power may also lead to challenges to the Committee's authority, jurisdiction, and subpoena power. Is the expectation that Legal Counsel will take the lead in litigating these potential issues in court?

Answer: The responder may be involved in some or all of these matters. After a contract is signed, the LEGISLATIVE GENERAL COUNSEL will consult with the the special counsel and determine the tasks that the special counsel will be assigned. The OLRGC has already conducted significant research into these matters and will share its research and legal opinions with the special counsel. The special counsel may be asked to conduct additional research and provide additional advice.

#### ITEM 28

Question: The RFP also implies an expectation that Legal Counsel will assist in "questioning witnesses." Is the expectation that Legal Counsel will have the ability to take

closed depositions, hold private meetings with witnesses, and/or question witnesses in a non-public setting before Committee meetings are held?

Answer: Yes.

#### ITEM 29

Question: Is the investigative mandate limited to the existing allegations against Mr. Swallow or will it extend to currently unknown “matters related to the attorney general that arise as part of the investigation?” (RFP II.1, p. 2). If Legal Counsel comes across new allegations in the course of the investigation, should Legal Counsel follow up and investigate or merely report its findings? Who will be responsible for determining if the new matters are “related?”

Answer: The investigation is not limited to the existing allegations. If new allegations are discovered, special counsel will inform, and consult with, the LEGISLATIVE GENERAL COUNSEL regarding the new allegations. If necessary, discussion will be held with the COMMITTEE to determine whether it is beneficial to explore the new allegations.

#### ITEM 30

Question: Who will conduct the “investigation” regarding the alleged misconduct of Mr. Swallow? It is our understanding that a separate RFP will be issued to engage an “investigator.” Is the Legislative General Counsel merely looking for counsel to provide legal advice and he will engage non-attorney investigators to undertake the investigation?

Answer: See the answers to Items 10 and 24. Special counsel will, under the direction and control of the LEGISLATIVE GENERAL COUNSEL, direct the investigators in the organization and conduct of the investigation.